

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL Nos.1383 & 1401 OF 2018

COMMON JUDGMENT: *(Per the Hon'ble Si Justice S.V.Bhatt)*

Heard Mr.Ghanta Rama Rao, learned senior counsel and Mr.K.Rathanga Pani Reddy for appellants, Mr.C.Ramchandra Raju and learned Government Pleader (Fisheries) for respondents.

2. These two appeals are at the instance of respondents in W.P.No.25153 of 2018 and proposed appellants in W.A.No.1401 of 2018. Hence, they are disposed of by this common judgment. The parties are referred to as arrayed in the appeal.

3. Respondents 1 to 9 filed W.P.No.25153 of 2018 praying for a writ in the nature of Mandamus declaring the inaction of respondent Nos.11 to 15 herein in taking action against 2nd appellant herein, as illegal, amounts to refusing to exercise the jurisdiction conferred on the authorities and unconstitutional.

4. Through the order under appeal, learned Single Judge disposed of the writ petition directing respondent Nos.10 to 15 herein as follows:

"It is significant to note that the very eligibility of respondent No.8 and certain others as Members in respondent No.7-Society is under challenge in the present writ petition. As noted supra, the learned counsel for the petitioners contends that continuation of respondent No.8 and certain others in respondent No.7 is in contravention of G.O.Ms.No.98, dated 22.01.1964.

Having regard to the above submissions and taking into account the submissions of the learned Government

Pleader, this court deems it appropriate to dispose of the writ petition with a direction to the official respondents herein to take appropriate action on the representations of the petitioners dated 22.03.2018, 12.05.2018 and 25.05.2018 in terms of G.O.Ms.No.98, Revenue Department, dated 22.01.1964 and G.O.Ms.No.35, Animal Husbandry, Dairy Development & Fisheries (Fish-II) Department, dated 29.04.2003 and pass appropriate orders thereon, as expeditiously as possible, preferably, within a period of 4 (four) weeks from the date of receipt of a copy of this order. Till the said exercise is completed, the fish in the subject tank shall not be caught.”

5. The appellants contend that the direction excerpted above makes the observation mandatory for the authorities to act as per the Government Orders referred in the order under appeal, but not other applicable orders. According to them, the issue if is required to be re-examined, the whole spectrum of Government Orders will have to be considered by the authorities and orders passed accordingly. On this ground alone, the appellants firstly pray for setting aside the order under appeal and alternatively submit that the inaction if is considered and the consideration by respondent Nos.10 to 15 thereafter ought to be in accordance with the orders the appellants rely in support of their case.

6. Mr.Ramchandra Raju submits that the writ appeal is misconceived inasmuch as in the writ petition filed by his clients, the inaction of respondent Nos.10 to 15 herein is directed to be considered and no further prayer is granted. The appellants, when are given opportunity by official respondents, can rely on the Government Orders, if any, on the subject. He firstly prays for dismissing the appeal and alternatively submits that while

considering the representation of writ petitioners all the applicable Government Orders and questions raised by the parties are specifically adverted to and decided.

7. We are of the view that the prayer is accepted by the learned Single Judge to the limited extent of inaction in disposing of the representation filed by respondent Nos.1 to 9 herein. As rightly pointed out by Mr. Ramachandra Raju, the grievance of his clients is limited and representation is directed to be disposed of, so that the persons to whom notices are issued while re-examining the issue can certainly rely on the Government Orders in their favour and ultimately it is for the competent authority to decide all these issues.

8. Hence, for the view we have taken above, both the writ appeals are disposed of by modifying the operative portion of the order of the learned Single Judge as follows:

- a. The society while re-examining the issue of eligibility of a few members, considers the eligibility or ineligibility by referring to all the applicable Government Orders, including the Government Orders on which the writ petitioners are relying on.
- b. The society affords opportunity to all the members.
- c. The steps so far taken pursuant to the order under appeal are set aside and fresh steps are directed to be taken in four (04) weeks and completed within period of twelve (12) weeks from today.

- d. Fishing operations if are required to be undertaken, such operations shall be under the supervision of the Assistant Director of Fisheries.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

15th November, 2018

Note:

Issue CC in (7) days.

Lrkm

S.V.BHATT, J

